

SENATE BILL NO. 145

INTRODUCED BY HARRINGTON

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE REGULATION OF PETROLEUM TANKS; ~~INCREASING THE NUMBER OF MEMBERS~~ REVISING THE MEMBERSHIP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING REIMBURSEMENT ELIGIBILITY CRITERIA AND PROCEDURES; REQUIRING THE BOARD TO ANALYZE AND REPORT ON THE VIABILITY OF THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 2-15-2108, 75-11-308, 75-11-309, 75-11-312, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-2108, MCA, is amended to read:

"2-15-2108. Petroleum tank release compensation board. (1) There is a petroleum tank release compensation board.

(2) The board consists of ~~seven~~ nine SEVEN members appointed by the governor as follows:

(a) a representative of the financial or banking industry with experience in small business or property loans;

~~— (b) an attorney licensed to practice law in Montana with experience in environmental law;~~

~~(c)~~ (B) a representative of the petroleum services industry or a representative of the petroleum release remediation consultant industry;

~~(d)~~ (C) a representative of independent petroleum marketers and chain retailers;

~~(e)~~ (D) ~~a representative~~ two representatives A REPRESENTATIVE of the general public;

~~(f)~~ (E) a representative of service station dealers; ~~and~~

~~(g)~~ (F) a representative of the insurance industry; ~~and~~

~~(h)~~ (G) a person with a background in environmental regulation.

(3) The board shall elect a presiding officer.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging

1 while engaged in board business, as provided in 2-18-501 through 2-18-503."

2
3 **Section 2.** Section 75-11-308, MCA, is amended to read:

4 **"75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for the applicable
5 percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum
6 storage tank only if:

7 (a) the release was discovered on or after April 13, 1989; ~~and~~

8 (b) the release occurred from:

9 (i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the
10 time that the release was discovered;

11 (ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state
12 and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum
13 release from a petroleum storage tank at the time that the release was discovered; or

14 (iii) an underground storage tank, as defined in 75-11-503, that the ~~property owner had no previous~~
15 ~~knowledge of if the tank was in compliance with the applicable state and federal laws and rules that the board~~
16 ~~determines pertain to the prevention and mitigation of a petroleum release at the time that the release was~~
17 ~~discovered~~ board determines was unknown to both the property owner and the department prior to its discovery
18 if the owner applies to the department for a closure permit in accordance with 75-11-212 within 30 days of the
19 date upon which the owner first had knowledge of the tank and closes the tank in accordance with the
20 requirements of the permit before the permit expires; and

21 ~~(b)(c)~~ (c) the release was an accidental release; ~~and~~

22 (e) ~~following the discovery of the release, the underground storage tank from which the release occurred~~
23 ~~was removed or had a valid permit pursuant to 75-11-509 and the petroleum storage tank remained in~~
24 ~~compliance with applicable state and federal laws and rules that the board determines pertain to prevention and~~
25 ~~mitigation of petroleum releases; and~~

26 ~~—— (d) the owner or operator undertakes corrective action to respond to the release and the corrective~~
27 ~~action is undertaken, in accordance with a corrective action plan approved by the department, from the time of~~
28 ~~discovery until the release is resolved.~~

29 (2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund
30 for expenses caused by releases from the following petroleum storage tanks:

- 1 (a) a tank located at a refinery or a terminal of a refiner;
2 (b) a tank located at an oil and gas production facility;
3 (c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that
4 was operated by a lessee of a railroad in the course of nonrailroad operations;
5 (d) a tank belonging to the federal government;
6 (e) a tank owned or operated by a person who has been convicted of a substantial violation of state or
7 federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or
8 (f) a mobile storage tank used to transport petroleum or petroleum products from one location to
9 another.

10 ~~(3) When, subsequent to the discovery of a release, an owner or operator fails to remain in compliance~~
11 ~~as required by subsection (1)(c) or fails to conduct corrective action as required by subsection (1)(d) and is~~
12 ~~issued a violation letter by the department, all reimbursement of claims submitted after the date of the violation~~
13 ~~letter must be suspended. Upon a determination by the department that all violations identified in the violation~~
14 ~~letter have been corrected, all suspended and future claims may be reimbursed according to criteria established~~
15 ~~by the board. In determining the amount of reimbursement, if any, the board may consider the effect and~~
16 ~~duration of the noncompliance."~~

17
18 **Section 3.** Section 75-11-309, MCA, is amended to read:

19 **"75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking
20 reimbursement for eligible costs and the department shall comply with the following procedures:

21 (a) If an owner or operator discovers or is provided evidence that a release may have occurred from
22 the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department
23 of the release and conduct an initial response to the release in accordance with state and federal laws and rules
24 to protect the public health and safety and the environment.

25 (b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120
26 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in
27 compliance with applicable state and federal laws and rules that the board determines pertain to prevention and
28 mitigation of petroleum releases.

29 ~~(b)(c)~~ The owner or operator shall conduct a thorough investigation of the release, report the findings
30 to the department, and, as determined necessary by the department, prepare and submit for approval by the

1 department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective
2 action requirements.

3 ~~(e)~~(d) (i) The department shall review the corrective action plan and forward a copy to a local
4 government office and, when applicable, a tribal government office with jurisdiction over a corrective action for
5 the release. The local or tribal government office shall inform the department if it wants any modification of the
6 proposed plan.

7 (ii) Based on its own review and comments received from a local government, tribal government, or
8 other source, the department may approve the proposed corrective action plan, make or request the owner or
9 operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan
10 finally approved by the department through any process provided in this subsection ~~(f)~~~~(e)~~ (1)(d) is the approved
11 corrective action plan.

12 (iii) After the department approves a corrective action plan, a local government or tribal government may
13 not impose different corrective action requirements on the owner or operator.

14 ~~(d)~~(e) The department shall notify the owner or operator of its approval of a corrective action plan and
15 shall promptly submit a copy of the approved corrective action plan to the board.

16 ~~(e)~~(f) The owner or operator shall implement the corrective action plan or plans approved plan by the
17 department until the release is resolved. The department may oversee the implementation of the plan, require
18 reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority
19 concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable
20 law and rules.

21 ~~(f)~~(g) (i) The owner or operator shall document in the manner required by the board all expenses
22 incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims
23 and substantiating documents to the board in the form and manner required by the board.

24 (ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary
25 costs of responding to the release and implementing the corrective action plan.

26 (iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and
27 necessary, the board may request comment from the department and the owner or operator.

28 (iv) If the department determines that an owner or operator is failing to properly implement a corrective
29 action plan, it shall notify the board.

30 ~~(g)~~(h) The owner or operator shall document, in the manner required by the board, any payments to a

1 third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims
2 and substantiating documents to the board in the form and manner required by the board.

3 ~~(h)~~(i) In addition to the documentation in subsections ~~(1)(f)~~ (1)(g) and ~~(1)(g)~~ (1)(h), when the release is
4 claimed to have originated from a double-walled tank system, the owner or operator shall document, in the
5 manner required by the board, the following:

6 (i) the date that the release was discovered;

7 (ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

8 (iii) that the double-walled tank system was properly installed and made of materials and constructed
9 in accordance with applicable department regulations.

10 (2) If an owner or operator is issued an administrative order for failure to comply with requirements
11 imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5,
12 all reimbursement of claims submitted after the date of the order must be suspended. Upon a written
13 determination by the department that the owner or operator has returned to compliance with the requirements
14 of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future
15 claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board
16 shall consider the effect and duration of the noncompliance.

17 ~~(2)(3)~~ The board shall review each claim received under subsections ~~(1)(f)~~ (1)(g) and ~~(1)(g)~~ (1)(h), make
18 the determination required by this subsection, inform the owner or operator of its determination, and, as
19 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall
20 affirmatively determine that:

21 (a) the expenses for which reimbursement is claimed:

22 (i) are eligible costs; and

23 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
24 corrective action plan approved by the department or for payments to a third party for bodily injury or property
25 damage; and

26 (b) the owner or operator:

27 (i) is eligible for reimbursement under 75-11-308; and

28 (ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination
29 by the board that the owner or operator has not complied with this section or rules adopted pursuant to this
30 section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board

1 that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section,
2 suspended and future claims may be reimbursed according to criteria established by the board. In establishing
3 the criteria, the board shall consider the effect and duration of the noncompliance.

4 ~~(3)~~(4) If an owner or operator disagrees with a board determination under subsection ~~(2)~~ (3), the owner
5 or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting
6 of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days
7 following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

8 ~~(4)~~(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in
9 the order that the costs are finally approved by the board.

10 ~~(5)~~(6) (a) The board may, at the request of an owner or operator, guarantee in writing the
11 reimbursement of eligible costs that have been approved by the board but for which money is not currently
12 available from the fund for reimbursement.

13 (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of
14 eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment
15 under this subsection ~~(5)~~(b) ~~(6)~~(b) does not affect the order in which money in the fund is obligated under
16 subsection ~~(4)~~ (5).

17 (c) When considering a request for a guarantee of payment, the board may require pertinent information
18 or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for
19 a guarantee."
20

21 **Section 4.** Section 75-11-312, MCA, is amended to read:

22 **"75-11-312. Review of corrective action plans and claims.** (1) To ensure that the fund provided for
23 in 75-11-313 is being ~~utilized~~ used in the most efficient manner, the board may implement a program of
24 third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim
25 for review by a qualified third party of the board's choosing.

26 (2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the
27 board may remand the plan to the department for further review.

28 (3) If a third-party review suggests that submitted costs do not comply with the requirements of
29 75-11-309~~(2)~~(a) ~~(3)~~(a), the board may deny the costs, subject to 75-11-309~~(3)~~(4)."
30

1 **Section 5.** Section 75-11-318, MCA, is amended to read:

2 **"75-11-318. Powers and duties of board.** (1) The board shall administer the petroleum tank release
3 cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners
4 and operators. The board may hire its own staff to assist in the implementation of this part.

5 (2) The board shall determine whether to approve reimbursement of eligible costs under the provisions
6 of 75-11-309~~(2)~~(3), shall obligate money from the fund for approved costs, and shall act on requests for the
7 guarantee of payments through the procedures and criteria provided in 75-11-309.

8 (3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business
9 that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly
10 for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other
11 business as necessary.

12 (4) The board shall use the fund to pay for:

13 (a) department expenses incurred in providing assistance to the board. The board shall review and
14 comment on all department administrative budget proposals that are assessed against the fund prior to submittal
15 of the department budget for legislative approval. Department administrative expenses on behalf of the board
16 may include:

17 (i) the review or preparation of corrective action plans;

18 (ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part;

19 and

20 (iii) the actual and necessary administrative support provided to the board.

21 (b) department of transportation staff expenses used for the collection of the petroleum storage tank
22 cleanup fee;

23 (c) third-party review of corrective action plans or claims pursuant to 75-11-312;

24 (d) board staff expenses; and

25 (e) expenses of implementing the board's duties as provided in this part.

26 (5) The board shall adopt rules to administer this part, including:

27 (a) rules governing submission of claims by owners or operators to the department and board;

28 (b) procedures for determining owners or operators who are eligible for reimbursement and determining
29 the validity of claims;

30 (c) procedures for the review and approval of corrective action plans;

1 (d) procedures for conducting board meetings, hearings, and other business necessary for the
2 implementation of this part;

3 (e) the criteria and reimbursement rates applicable to those owners and operators who comply with a
4 violation letter issued by the department; and

5 (f) other rules necessary for the administration of this part.

6 (6) The board may apply for, accept, and repay loans from the board of investments pursuant to
7 17-6-225.

8 (7) The board shall conduct an analysis of the short-term and long-term viability of the fund and report
9 its findings to the director of the department and the legislative auditor by July 1 prior to each regular legislative
10 session. This analysis must include but is not limited to:

11 (a) trends in fund revenue and expenditure activity;

12 (b) exposure to long-term liabilities;

13 (c) impacts of changes in state and federal regulations
14 relating to underground and aboveground storage tanks;

15 (d) availability of petroleum storage tank liability
16 insurance in the private sector and trends in provisions of the insurance; and

17 (e) the continuing need for collection of all or part of the
18 petroleum tank release cleanup fee."

19
20 NEW SECTION. Section 6. Saving clause. [This act] does not affect rights and duties that matured,
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22
23 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2005.

24 - END -